Rule 410. Pleas, Plea Discussions and Related Statements.

(a) Prohibited Uses. Except as otherwise provided by statute, in a civil or criminal case, or administrative proceeding, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

(1) a guilty plea that was later withdrawn;

(2) a nolo contendere or no contest plea;

(3) a statement made during a proceeding on either of those pleas under Arizona Rule of Criminal Procedure 17.4 or a comparable federal procedure; or

(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4):

(1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 410, including the addition of subdivision (b)(2) and the Arizona-specific provision in subdivision (a)(3).

Additionally, the language of Rule 410 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Arizona Rule of Criminal Procedure 17.4(f) has also been amended to conform to its federal counterpart, Federal Rule of Criminal Procedure 11(f).

Cases

410.010 Evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere or no contest, or an offer to plead guilty, nolo contendere, or no contest to the crime charged or any other crime is not admissible against the person who made the plea or offer in any civil or criminal action or administrative proceeding.

State v. Campoy (Crockwell), 220 Ariz. 539, 207 P.3d 792, ¶¶ 5–10 (Ct App. 2009) (prosecutor told defendant he would have to participate in "debriefing" or "free talk" if defendant was interested in plea agreement; on 4/11/07, defendant gave first statement; on 4/19/07, defendant and state entered into plea agreement; on 7/12/07, defendant gave second statement, and on 8/27/07, gave third statement; because in third statement, defendant contradicted what he had said in first and second statements, trial court allowed state to withdraw from plea agreement; trial court ruled that state could not use any of these statements in case-in-chief, but could use them on cross-examination; state implicitly conceded that Rule 410 precluded admission of defendant's first statement in case-in-chief).

410.020 Evidence of statements made in connection with a plea of guilty, later withdrawn, or a plea of nolo contendere or no contest, or an offer to plead guilty, nolo contendere, or no contest to the crime charged or any other crime is not admissible against the person who made the plea or offer in any civil or criminal action or administrative proceeding.

State v. Vargas, 127 Ariz. 59, 60–61, 618 P.2d 229, 230–31 (1980) (during discussions concerning possible guilty plea that would require defendant to testify truthfully about events surrounding crime, defendant signed document that affirmed that his earlier statements to police were truthful; when defendant denied truth of his statements to police, state impeached him with signed document, and state relied on signed document in closing argument; court held that trial court erred in allowing state to use document).

410.030 The phrase "statements made in connection with" a plea of guilty, nolo contendere, or no contest applies only to the statements made during the plea negotiations or the taking of the plea, and does not apply to any statements made after the plea agreement that the defendant made pursuant to a truthful-cooperation clause.

State v. Campoy (Crockwell), 220 Ariz. 539, 207 P.3d 792, ¶¶ 5–25 (Ct App. 2009) (prosecutor told defendant he would have to participate in "debriefing" or "free talk" if defendant was interested in plea agreement; on 4/11/07, defendant gave first statement; on 4/19/07, defendant and state entered into plea agreement that provided that defendant would tell the truth and cooperate with investigation; on 7/12/07, defendant gave second statement, and on 8/27/07, gave third statement; because in third statement, defendant contradicted what he had said in first and second statements, trial court allowed state to withdraw from plea agreement; trial court ruled that state could not use any of these statements in case-in-chief, but could use them on cross-examination; court held that, because defendant gave second and third statements pursuant to cooperation clause, Rule 410 did not preclude state from using second and third statements in case-in-chief).

410.040 Although this rule prohibits the introduction of the plea discussions and any statements made at a hearing on the plea, a defendant may waive that protection by entering into an agreement that provides (1) that the defendant will cooperate truthfully, (2) that the state may withdraw from the plea agreement if the defendant does not cooperate truthfully, and (3) if the state withdraws from the plea agreement, it may use against the defendant any statements made pursuant to the plea agreement.

State v. Campoy (Crockwell), 220 Ariz. 539, 207 P.3d 792, ¶¶ 26–34 (Ct App. 2009) (prosecutor told defendant he would have to participate in "debriefing" or "free talk" if defendant was interested in plea agreement; on 4/11/07, defendant gave statement; on 4/19/07, defendant and state entered into plea agreement that provided defendant would tell truth and cooperate with investigation; on 7/12/07, defendant gave second statement, and on 8/27/07, gave third statement; because in third statement, defendant contradicted what he had said in first and second statements, trial court allowed state to withdraw from plea agreement; trial court ruled that state could not use any of these statements in case-in-chief, but could use them on cross-examination; court held that, although Rule 410 would preclude state from using first statement, defendant waived protection of that rule by entering into agreement and then breaching it, thus state could use first statement in case-in-chief).

410.050 Evidence of a plea of guilty, nolo contendere, or no contest, or an offer to plead guilty, nolo contendere, or no contest, of statements in connection with any of these, is admissible if provided by applicable Act of Congress, Arizona statute, or the Arizona Rules of Criminal Procedure.

K.B. v. State Farm F. & C. Co., 189 Ariz. 263, 266–67, 941 P.2d 1288, 1291–92 (Ct. App. 1997) (defendant pled guilty to attempted child molestation, which required intent to commit crime; under A.R.S. § 13–807, defendant was estopped from denying he acted intentionally; victim sued defendant, insurance company denied coverage under intentional act exclusion, defendant allowed judgment to be entered against him and assigned his cause of action against insurance company in exchange for covenant not to execute; because victim obtained only those rights defendant had, and because defendant was precluded from denying he acted intentionally, victim was precluded from denying intentional acts under intentional acts exclusion of insurance policy).

Republic Ins. Co. v. Feidler, 178 Ariz. 528, 532–33, 875 P.2d 187, 192–93 (Ct. App. 1993) (under A.R.S. § 13–807, defendant convicted after no contest plea is estopped from denying commission of minimum acts that would suffice for conviction; insured had pled no contest to aggravated assault, and because he could have acted recklessly in committing aggravated assault, he still could claim he was too intoxicated to have acted intentionally).

Bear v. Nicholls, 142 Ariz. 560, 562, 691 P.2d 326, 328 (Ct. App. 1984) (plaintiff's federal convictions for income tax evasion were based on nolo contendere plea; court held that, because A.R.S. § 32–2153(B)(2) allows Real Estate Commissioner to revoke license following felony conviction and does not distinguish between guilty verdict, guilty plea, or nolo contendere plea, Commissioner properly revoked plaintiff's license).

410.060 This rule applies only to statements made in connection with formal plea negotiations, and does not protect statements a suspect made in an unsolicited offer to assist authorities in order to avoid prosecution or imprisonment.

State v. Fillmore, 187 Ariz. 174, 177–79, 927 P.2d 1303, 1306–08 (Ct. App. 1996) (prior to any charges being filed, defendant approached the officers and said he did not want to go to jail, and offered to give them information about others trafficking in stolen property, but said he would not testify against those persons and said his name could not be used; court concluded this was unsolicited offer to assist authorities in order to avoid prosecution and held that this rule did not preclude admission of defendant's statements).

State v. Stuck, 154 Ariz. 16, 20–21, 739 P.2d 1333, 1337–38 (Ct. App. 1987) (trial court properly admitted statement defendant made to police officers: "I want to plead guilty. I was in the wrong. I think you found enough evidence. Leave Sandra out of it").

State v. Stuck, 154 Ariz. 16, 21, 739 P.2d 1333, 1337 (Ct. App. 1987) (because defendant made statements after he had been given counsel, court rejected argument that he made statements when he was attempting to act pro se).

State v. Sweet, 143 Ariz. 289, 294, 693 P.2d 944, 949 (Ct. App. 1984) (rule did not preclude admission of statements made to police in conjunction with defendant's inquiries of what he could do for police in exchange for getting out of charges), *vac'd in part on other grounds*, 143 Ariz. 266, 693 P.2d 921 (1985).

410.070 When a defendant introduces evidence of plea bargain negotiations to show involuntariness of defendant's statement, the prosecutor may then inquire on cross-examination into circumstances surrounding bargaining discussions.

State v. Linden, 136 Ariz. 129, 137–38, 664 P.2d 673, 681–82 (Ct. App. 1983) (once defendant testified about plea bargain negotiations to show involuntariness of his statement, he was subject to cross-examination about circumstances surrounding discussion).

410.080 Evidence that one defendant has pled guilty is not admissible against the other when both are charged with the same crime and tried separately, but us admissible if the defendant attacks the codefendant's credibility and the plea agreement supports the codefendant's credibility.

State v. McDonald, 117 Ariz. 159, 161, 571 P.2d 656, 658 (1977) (co-defendant's guilty plea was improperly introduced and no cautionary instruction was requested to effect that plea was not to be considered as evidence of defendant's guilt; court examined facts and circumstances and determined any error was harmless).

State v. Fendler, 127 Ariz. 464, 484–85, 622 P.2d 23, 43–44 (Ct. App. 1980) (state entitled to purge any misimpression left by defendant that state was secreting information about co-defendant's credibility by inquiring into co-defendant's guilty plea).